

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>DANNY BROWN,</b>	:	<b>Case No. 10-CV-752</b>
	:	
<b>Plaintiff,</b>	:	<b>Judge Solomon Oliver</b>
	:	
<b>v.</b>	:	<b><u>Answer of the United States</u></b>
	:	
<b>UNITED STATES OF AMERICA</b>	:	
	:	
<b>Defendants.</b>	:	

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The United States of America, defendant, by its undersigned counsel, and in answer to the Complaint filed herein states:

**FIRST DEFENSE**

The Complaint fails to state a claim upon which relief can be granted.

**SECOND DEFENSE**

The injuries and damages alleged in the Complaint were proximately caused by the intervening or superseding acts of one other than an employee or agent of United States and were not caused by an act or omission of any employee or agent of the United States while acting within the scope of office or employment.

**THIRD DEFENSE**

This Court lacks subject matter jurisdiction over the Federal Tort Claims Act claim, in whole or in part.

**FOURTH DEFENSE**

The arrest and imprisonment of which plaintiff complains was made pursuant to valid legal process secured by federal employees acting in good faith with probable cause.

**FIFTH DEFENSE**

The alleged accident and injuries claimed were caused by third parties for whose acts or omissions the United States cannot be held liable.

**SIXTH DEFENSE**

To the extent that the alleged injuries were caused in part by third parties, any recovery to which Plaintiffs otherwise would be entitled must be reduced to the extent of the comparative fault of such third parties.

**SEVENTH DEFENSE**

To the extent that plaintiffs are entitled to recover damages from the United States in this action, the United States is entitled to a credit or set-off for any past or future benefits paid to or on behalf of or received by Plaintiffs, to the extent allowed under federal and state common and statutory law.

**EIGHTH DEFENSE**

To the extent the common or statutory law of Ohio, where the alleged acts or omissions occurred, limits damages or limits the defendants' liability or plaintiffs' cause of action, that law applies to this action against the United States to the extent that it is not inconsistent with the Federal Tort Claims Act.

**NINTH DEFENSE**

Plaintiffs' recovery, if any, must be reduced to the extent of any failure to mitigate any alleged damages.

**TENTH DEFENSE**

Plaintiffs' damages under the FTCA, if any, are limited to the amount stated in their

administrative claim. 28 U.S.C. § 2675(b).

**ELEVENTH DEFENSE**

Plaintiffs cannot recover punitive damages against the United States. 28 U.S.C. § 2674.

**TWELFTH DEFENSE**

Plaintiffs' demand for a jury trial as to the United States is barred. 28 U.S.C. § 2402.

**THIRTEENTH DEFENSE**

Some or all of the claims asserted against the United States are barred by the applicable statute of limitations.

**FOURTEENTH DEFENSE**

To the extent that Plaintiffs contend that the United States is liable because federal law enforcement employees failed to protect them from the actions of Jerrell Bray and/or negligently supervised him and/or federal employees, such claims fall within the discretionary function exception to the Federal Tort Claims Act, 28 U.S.C. § 2680(a).

**FIFTEENTH DEFENSE**

Answering specifically the numbered paragraphs of the Amended Complaint, utilizing the same paragraph numbering, the United States admits, denies and otherwise answers as follows:

1. This paragraph contains statements and conclusions of law to which the United States is not required to answer, but insofar as an answer is deemed required, the United States denies the allegations.
2. This paragraph contains statements and conclusions of law as to the jurisdiction of this Court to which the defendant is not required to answer, but insofar as an answer is deemed required, defendant denies the allegations.

4. This paragraph contains statements of identification which this defendant cannot confirm or deny, and thus the statements are denied on that basis.
5. This paragraph contains statements and conclusions of law to which the United States is not required to answer, but insofar as an answer is deemed required, the United States denies the allegations.
6. The United States is without sufficient information to confirm or deny the allegations of this paragraph and therefore denies same.
7. The United States is without sufficient information to confirm or deny the allegations of this paragraph and therefore denies same.
8. The United States avers that Jerrell Bray has made multiple, contradictory statements regarding an alleged sale of drugs by him to plaintiff. The United States is without sufficient information to confirm or deny the remaining allegations of this paragraph and therefore denies same.
9. This paragraph contains statements and conclusions of law to which the United States is not required to answer, but insofar as an answer is deemed required, the United States denies the allegations.
10. This paragraph contains statements and conclusions of law to which the United States is not required to answer, but insofar as an answer is deemed required, the United States denies the allegations.
11. This paragraph contains statements and conclusions of law to which the United States is not required to answer, but insofar as an answer is deemed required, the United States denies the allegations.

12. This paragraph contains statements and conclusions of law to which the United States is not required to answer, but insofar as an answer is deemed required, the United States denies the allegations.
13. This paragraph contains statements and conclusions of law to which the United States is not required to answer, but insofar as an answer is deemed required, the United States denies the allegations.
14. This paragraph contains statements and conclusions of law to which the United States is not required to answer, but insofar as an answer is deemed required, the United States denies the allegations.
15. The United States is without sufficient information to confirm or deny the allegations of this paragraph and therefore denies same.
16. This paragraph contains statements and conclusions of law to which the United States is not required to answer, but insofar as an answer is deemed required, the United States denies the allegations.
17. This paragraph contains statements and conclusions of law to which the United States is not required to answer, but insofar as an answer is deemed required, the United States denies the allegations.
18. This paragraph contains statements and conclusions of law to which the United States is not required to answer, but insofar as an answer is deemed required, the United States denies the allegations.
19. The United States received plaintiff's administrative tort claim on or about December 12, 2007.

20. The United States admits that it has not decided plaintiff's administrative tort claim to date.
21. This paragraph contains statements and conclusions of law to which the United States is not required to answer, but insofar as an answer is deemed required, the United States denies the allegations.
22. This paragraph contains statements and conclusions of law to which the United States is not required to answer, but insofar as an answer is deemed required, the United States denies the allegations.
23. The United States is without sufficient information to confirm or deny the allegations of this paragraph and therefore denies same.
24. This paragraph contains statements and conclusions of law to which the United States is not required to answer, but insofar as an answer is deemed required, the United States denies the allegations.
25. This paragraph contains statements and conclusions of law to which the United States is not required to answer, but insofar as an answer is deemed required, the United States denies the allegations.

**WHEREFORE**, having fully answered, Defendant United States of America respectfully requests this Court issue an order dismissing the Complaint and awarding costs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically on July 1, 2010 and was served electronically on all parties by operation of the Court's electronic filing system.

Parties may access this filing through the Court's system.

s/Lawrence Eiser  
LAWRENCE EISER